

**AGREEMENT BETWEEN  
LAKE COUNTY, FLORIDA AND  
MERRELL'S GRADE-ALL, INC.  
FOR RIGHT OF WAY SHOULDER REHABILITATION**

**RFP #16-0022**

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, herein referred to as COUNTY, by and through its Board of County Commissioners, and Merrell's Grade-All, Inc., a Florida for profit corporation, its successors and assigns, herein referred to as CONTRACTOR.

**WITNESSETH:**

**WHEREAS**, the COUNTY publicly submitted an Invitation to Bid (ITB) #16-0022 seeking firms or individuals to rehabilitate the road shoulders along the roads listed below in accordance with the technical requirements and complete any additional work as outlined herein in the rights of way of said roads; and

**WHEREAS**, the CONTRACTOR desires to perform such services subject to the terms of this Agreement; and

**WHEREAS**, the provision of such services will benefit the parties and the residents of Lake County, Florida.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

**Article 1. Recitals**

The foregoing recitals are true and correct and incorporated herein.

**Article 2. Purpose**

The purpose of this Agreement is to rehabilitate the road shoulders along the roads shown below in accordance with the technical requirements and complete any additional work as outlined herein in the rights of way on the following roads:

Cherry Lake Road (1829)  
Coralwood Lane (1926)  
Country Road (7798A)  
County Road 44A (6678/7077)  
County Road 44A (6286)  
East Crooked Lake Drive (5069)  
Griffin Avenue (7807)  
Griffin Road (4908)  
Morningside Drive (4568)  
Oak Avenue (7798)  
Old Eustis Road (4672)  
Woodlea Road (3840)

### Article 3. Scope of Professional Services

**3.1** On the terms and conditions set forth in this Agreement, the COUNTY hereby engages the CONTRACTOR to provide rehabilitation of the shoulders in accordance with the technical requirements and complete any additional work as outlined below in the rights of way on the following roads:

#### Cherry Lake Road (1829):

Both sides of Cherry Lake Road (1829) totaling 16,200 linear feet marked in pink paint between County Road 33(2409) and 8625 Cherry Lake Road.

#### Coralwood Lane (1926):

There is one segment totaling 2,300 linear feet marked in pink paint on the west side of Coralwood Lane (1926) between 17925 Coralwood Lane and 18147 Coralwood Lane.

#### Country Road (7798A):

Both sides of Country Road (7798A) totaling 4,420 linear feet marked in pink paint between Oak Avenue (7798) and Swift Road (7798B).

#### County Road 44A (6678/7077):

Both sides of County Road 44A (6678/7077) totaling 26,308 linear feet marked in pink paint between County Road 450A (7270) and Estes Road (5876).

#### County Road 44A (6286):

Both sides of County Road 44A (6286) totaling 12,430 linear feet marked in pink paint between County Road 437 (5386) and 23315 County Road 44A.

#### East Crooked Lake Drive (5069):

Both sides of East Crooked Lake Drive (5069) totaling 4,000 linear feet marked in pink paint between Country Club Drive and Broadvue Avenue.

#### Griffin Avenue (7807):

There are segments on both sides of Griffin Avenue (7807) totaling 2,306 linear feet marked in pink paint between Uncle Donald's Lane and Grays Airport Road (7310).

#### Griffin Road (4908):

There are segments on both sides of Griffin Road (4908) totaling 4,520 linear feet marked in pink paint between Thomas Avenue (5108) and County Road 468 (5205).

#### Morningside Drive (4568):

There is one segment totaling 2,100 linear feet marked in pink paint on the northbound lane of Morningside Drive (4568) between Pineway Court and Sunset Circle (4769).

Oak Avenue (7798):

Both sides of Oak Avenue (7798) totaling 2,940 linear feet marked in pink paint between SR 44 and Country Road (7798A).

Old Eustis Road (4672):

Both sides of Old Eustis Road (4672) totaling 3,343 linear feet marked in pink paint between Overlook Drive and East Crooked Lake Drive (5069).

Woodlea Road (3840):

Both sides of Woodlea Road (3840) totaling 14,282 linear feet marked in pink paint between State Road 19 and Lane Park Road (3637).

hereinafter referred to as the "Project", in accordance with the Scope of Work attached hereto as **Attachment A**, incorporated herein by reference.

3.2 The CONTRACTOR agrees and acknowledges that time is of the essence in completing the Scope of Work identified herein. All services shall be completed no later than the date specified in the Scope of Work, unless a written change order has been duly executed by both parties. Continuation of the performance period beyond the initial period is a COUNTY prerogative, and not a right of the CONTRACTOR. This prerogative may only be exercised when such continuation is clearly in the best interest of the COUNTY.

3.3 This Agreement shall commence on the first calendar day of the month succeeding approval of this Agreement by the Board of County Commissioners, or designee, unless otherwise stipulated in the Notice of Award Letter distributed by the COUNTY's Office of Procurement Services. The initial term of this Agreement shall remain in effect for 240 days, and then the Agreement will remain in effect until completion of the expressed and/or implied warranty period. The CONTRACTOR shall maintain, for the entirety of this Agreement, if any, the same prices, terms, and conditions included within this Agreement.

3.4 The CONTRACTOR shall coordinate, cooperate, and work with any other consultants retained by the COUNTY. The CONTRACTOR acknowledges that nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONTRACTOR or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

**Article 4. Payment**

4.1 The parties agree the total cost of the Project is \$385,225.80. The COUNTY shall pay the CONTRACTOR to complete the Scope of Work pursuant to the Pricing Schedule attached hereto as **Attachment B**, incorporated herein.

4.2 The CONTRACTOR upon fifteen (15) calendar days after completion of each individual project shall submit invoices to the COUNTY at P.O. Box 7800, Tavares, Florida 32778, unless the CONTRACTOR is notified in writing by the COUNTY of a different address and location of the COUNTY office. Each invoice shall contain the RFP number, a detailed description of services and fees, dates and locations of services, and confirmation of acceptance of the goods or services by the appropriate COUNTY representative. The CONTRACTOR shall keep a travel log indicating all dates of travel, mileage, etc.

4.3 The COUNTY shall make payment on all invoices in accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Failure to submit invoices in the prescribed manner will delay payment, and the CONTRACTOR may be considered in default of contract and the contract may be terminated.

4.4 The CONTRACTOR shall comply with all requirements imposed by applicable federal, state or local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R., Part 29, when applicable. The CONTRACTOR is advised that payments under this Agreement may be withheld pending completion and submission of all required forms and documents required of the CONTRACTOR pursuant to the grant funding requirements. A copy of the requirements shall be supplied to the CONTRACTOR upon request.

4.5 The CONTRACTOR shall:

a. utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CONTRACTOR during the term of this Agreement; and

b. expressly require any contractor and subcontractors performing work or providing services to the CONTRACTOR pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

4.6 The CONTRACTOR certifies that it has and will provide a drug-free workplace program throughout the duration of providing services under this Agreement, as defined in Section 287.087, Florida Statutes.

4.7 At the end of the Agreement period, the parties agree that the COUNTY will evaluate the CONTRACTOR's performance. This evaluation will become public record.

#### **Article 5. COUNTY Responsibilities**

5.1 The COUNTY shall promptly review the deliverables and other materials submitted by the CONTRACTOR and provide direction to the CONTRACTOR as needed. The COUNTY shall designate one COUNTY staff member to act as the COUNTY's Project Manager.

5.2 The COUNTY shall reimburse the CONSULTANT, in accordance with the provisions of Article 4 above for required services timely submitted and approved and accepted by the COUNTY in accordance with the terms of this Agreement.

5.3 The COUNTY will provide to the CONSULTANT all necessary and available data, photos, and documents the COUNTY possesses that would be useful to the CONSULTANT in the completion of the required services.

#### **Article 6. Special Terms and Conditions**

6.1 Qualifications. The CONTRACTOR shall during the entire duration and renewal(s) of this Agreement be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by the statutes to perform the services contained herein. The CONTRACTOR shall be registered with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes.

**6.2 Key Personnel.** The CONTRACTOR agrees that each person listed or referenced in the qualifications package shall be available to perform the services described herein for the COUNTY barring illness, accident, or other unforeseeable events of a similar nature in which case the CONTRACTOR must be able to promptly provide a qualified replacement. In the event the CONTRACTOR desires to substitute personnel, the CONTRACTOR shall propose a person with equal or higher qualifications and each replacement person is subject to prior written approval of the COUNTY. In the event the requested substitute is not satisfactory to the COUNTY and the matter cannot be resolved to the satisfaction of the COUNTY, the COUNTY reserves the right to terminate this Agreement.

**6.3 Termination.**

- A. **Termination for Convenience:** The COUNTY, at its sole discretion, reserves the right to terminate this Agreement upon thirty (30) days written notice. Upon receipt of such notice, the CONTRACTOR shall not incur any additional costs under this Agreement. The COUNTY shall be liable only for reasonable costs incurred by the CONTRACTOR prior to notice of termination. The COUNTY shall be the sole judge of "reasonable costs."
- B. **Termination Due to Unavailability of Continuing Funding:** When funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year, this Agreement shall be cancelled and the CONTRACTOR shall be reimbursed for the reasonable value of any non-recurring costs incurred amortized in the price of the supplies or services/tasks delivered under the contract.
- C. **Termination for Default:** The COUNTY reserves the right to terminate this Agreement, in part or in whole, or effect other appropriate remedy in the event the CONTRACTOR fails to perform in accordance with the terms and conditions stated herein. The COUNTY further reserves the right to suspend or debar the CONTRACTOR in accordance with the County ordinances, resolutions and/or administrative orders. The CONTRACTOR will be notified by letter of the COUNTY's intent to terminate. In the event of termination for default, the COUNTY may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement cost shall be borne by the CONTRACTOR.

**6.4 Assignment of Agreement.** This Agreement shall not be assigned or sublet except with the written consent of Lake County's Procurement Services Director on behalf of the COUNTY. No such consent shall be construed as making the COUNTY a party to the assignment or subcontract or subjecting the COUNTY to liability of any kind to any assignee, subconsultant or subcontractor. No assignment or subcontract shall under any circumstances relieve the CONTRACTOR of liability and obligations under this Agreement and all transactions with the COUNTY must be through the CONTRACTOR. In the event the CONTRACTOR is acquired in whole or in part by another entity, including any takeovers effectuated by a stock buyout, or similar acquisition process, the CONTRACTOR shall notify the COUNTY immediately. The COUNTY shall have the option of terminating this Agreement in the event the acquiring entity does not meet with the COUNTY's approval.

**6.5 Insurance.** The CONTRACTOR shall provide and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, policies of insurance, with a company or companies authorized to do business in the State of Florida, and which are acceptable to the COUNTY, insuring CONTRACTOR against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations of the CONTRACTOR under the terms and provisions of this Agreement. The CONTRACTOR is responsible for timely provision of certificate(s) of insurance to the COUNTY at the certificate holder address evidencing conformance with the requirements under this Agreement at all times throughout the term of the Agreement.

Such policies of insurance, and confirming certificates of insurance, shall insure the CONTRACTOR in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the CONTRACTOR must provide a notarized statement that if he or she is injured; he or she will not hold the COUNTY responsible for any payment or compensation.

Employers Liability insurance with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

The certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the COUNTY of any change, cancellation, or nonrenewal of the provided insurance. It is the CONTRACTOR'S specific responsibility to ensure that any such notice is provided within the stated timeframe to the certificate holder.

If it is not possible for the CONTRACTOR to certify compliance, on the certificate of insurance, with all of the above requirements, then the CONTRACTOR is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

Certificate(s) of insurance shall identify the applicable solicitation number in the Description of Operations section of the Certificate.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,  
AND THE BOARD OF COUNTY COMMISSIONERS.  
P.O. BOX 7800  
TAVARES, FL 32778-7800

Certificates of insurance shall evidence a waiver of subrogation in favor of the COUNTY, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the COUNTY.

The CONTRACTOR shall be responsible for subconsultants and their insurance. Subconsultants are to provide certificates of insurance to the CONTRACTOR evidencing coverage and terms in accordance with the CONTRACTOR's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the COUNTY. At the option of the COUNTY, the insurer shall reduce or eliminate such self-insured retentions or the CONTRACTOR or subconsultant shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The COUNTY shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the CONTRACTOR and/or subconsultant providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of this Agreement for default.

Neither approval by the COUNTY of any insurance supplied by the CONTRACTOR or subconsultant(s), nor a failure to disapprove that insurance, shall relieve the CONTRACTOR or subconsultant(s) of full responsibility for liability, damages, and accidents as set forth herein.

**6.6 Conflict of Interest.** The CONTRACTOR hereby certifies that no officer, agent, or employee of the COUNTY has any material interest, as defined in Chapter 112, Florida Statutes, either directly or indirectly in the CONTRACTOR as a business entity, and that no such person shall have any such interest at any time during the term of this Agreement unless approved in writing by the COUNTY upon consultation with its attorney.

**6.7 Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a consultant, supplier or sub-consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**6.8 Indemnity.** The CONTRACTOR shall indemnify and hold the COUNTY and its agents, officers, commissioners or employees harmless for any damages resulting from failure of the CONTRACTOR to take out and maintain the above insurance. In accordance with Section 725.08, Florida Statutes, the CONTRACTOR agrees for good and valuable consideration in the amount of ten dollars (\$10.00) to indemnify, and hold the COUNTY, its Governing Board, and its officers, commissions, and employees free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities to the extent resulting from the negligent act, error or

omission of the CONTRACTOR, its agents, employees or representative, in the performance of the CONTRACTOR's duties set forth in this Agreement.

**6.9 Independent Contractor.** The CONTRACTOR agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of the COUNTY. The CONTRACTOR shall have no authority to contract for or bind the COUNTY in any manner and shall not represent itself as an agent of the COUNTY or as otherwise authorized to act for or on behalf of the COUNTY.

**6.10 Ownership of Deliverables.** Upon completion of and payment for a task the CONTRACTOR agrees all Tasks and/or deliverables under this Agreement, and other data generated or developed by the CONTRACTOR under this Agreement or furnished by the COUNTY to the CONTRACTOR shall be and/or remain the property of the COUNTY. The CONTRACTOR shall perform any acts that may be deemed necessary or desirable by the COUNTY to more fully transfer ownership of all Tasks and/or deliverables to the COUNTY, at the COUNTY's expense. Additionally, the CONTRACTOR hereby represents and warrants that it has full right and authority to perform its obligations specified in this Agreement. The CONTRACTOR and the COUNTY recognize that the CONTRACTOR's work product submitted in performance of this Agreement is intended only for the project described in this Agreement. The COUNTY'S alteration of the CONTRACTOR's work product or its use by the COUNTY for any other purpose shall be at the COUNTY'S sole risk.

**6.11 Return of Materials.** Upon the request of the COUNTY, but in any event upon termination of this Agreement, the CONTRACTOR shall surrender to the COUNTY all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the CONTRACTOR by the COUNTY pursuant to this Agreement. CONTRACTOR may keep copies of all work product for its records.

**6.12 NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work from any cause whatsoever, shall relieve the CONTRACTOR of his duty to perform or give rise to any right to damages or additional compensation from the COUNTY. The CONTRACTOR expressly acknowledges and agrees that the CONTRACTOR shall receive no damages for delay. The CONTRACTOR's sole remedy, if any, against the COUNTY shall be the right to seek an extension to the Agreement time. However, this provision shall not preclude recovery of damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY. Otherwise, the CONTRACTOR shall be entitled to extensions of the Agreement time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

The parties will exercise every reasonable effort to meet their respective obligations hereunder. Notwithstanding the above, the parties shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law or regulation, acts of nature, acts or omissions of the other party, government acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems and/or any cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

**6.13 Retaining Other Contractors.** Nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONTRACTOR or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.



**6.14 Accuracy and Warranty.** The CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The CONTRACTOR shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, reports or other services. Any corrections shall be made within thirty (30) calendar days after such deficiencies or non-conformances are verbally reported by the COUNTY. The CONTRACTOR agrees that the products and services provided under this Agreement shall be covered by the most favorable commercial warranty that the CONTRACTOR gives to any customer for comparable products and services.

**6.15 Truth in Negotiation Certificate.** For all lump-sum or cost-plus fixed fee professional services contract over the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FOUR for One Hundred Ninety-five Thousand dollars (\$195,000.00), the Department of Transportation requires that the respondent execute a certificate and include it with their submittal. Any agreement requiring this certificate shall contain a provision that the original agreement price and any additions shall be adjusted to exclude any significant sums by which the COUNTY determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the contract. Execution of this Agreement constitutes execution of the Truth in Negotiation Certificate.

**6.16 Codes and Regulations.** All work completed under this Agreement shall conform to all applicable federal, state and local statutes, codes, regulations and ordinances.

**6.17 Prohibition Against Contingent Fees.** The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the the CONTRACTOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

**6.18 Public Records/Copyrights.**

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the CONTRACTOR for or on behalf of the COUNTY shall be the property of the COUNTY and will be turned over to the COUNTY upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the COUNTY are public records available for inspection by any person even if the file or paper resides in the CONTRACTOR's office or facility. The CONTRACTOR shall maintain the files and papers for not less than five (5) complete calendar years after the Project has been completed or terminated, or in accordance with any grant requirements, whichever is longer. Prior to the close out of this Agreement, the CONTRACTOR shall appoint a records custodian to handle any records request and provide the custodian's name and telephone number(s) to the Contracting Officer.

B. Any copyright derived from this Agreement shall belong to the author. The author and the CONSULTANT shall expressly assign to the COUNTY nonexclusive, royalty free rights to use any and all information provided by the CONTRACTOR in any deliverable and/or report for the COUNTY's use which may include publishing in the COUNTY documents and distribution as the COUNTY deems to be in the COUNTY's best interests. If anything included in any deliverable limits the rights of the COUNTY to use the information, the deliverable shall be considered defective and not acceptable and the CONTRACTOR will not be eligible for any compensation.

C. Pursuant to Section 119.0701, Florida Statutes, the CONTRACTOR shall comply with the Florida Public Records' laws, and shall:

1. Keep and maintain public records required by the COUNTY to perform the services identified herein.
2. Upon request from the COUNTY's custodian of public records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to COUNTY.
4. Upon completion of the contract, transfer, at no cost, to the COUNTY all public records in possession of the CONTRACTOR or keep and maintain public records required by the COUNTY to perform the service. If the CONTRACTOR transfers all public records to the COUNTY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT LAKE COUNTY PROCUREMENT SERVICES, 352-3439839, 315 W. MAIN STREET, TAVARES, FLORIDA 32778, [sdugan@lakecountyfl.gov](mailto:sdugan@lakecountyfl.gov).**

**6.19 Right to Audit.** The COUNTY reserves the right to require the CONTRACTOR to submit to an audit by any auditor of the COUNTY'S choosing. The CONTRACTOR shall provide access to all of its records which relate directly or indirectly to this Agreement at its place of business during regular business hours. The CONTRACTOR agrees to provide such assistance as may be necessary to facilitate the review or audit by the COUNTY to ensure compliance with applicable accounting and financial standards. Additionally, the CONTRACTOR agrees to include the requirements of this provision in all contracts with sub-consultants and material suppliers in connection with the work performed hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the CONTRACTOR to the COUNTY in excess of one percent (1%) of the total billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the COUNTY'S audit shall be reimbursed to the COUNTY by the CONTRACTOR. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CONTRACTOR's invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the COUNTY'S audit findings to the CONTRACTOR.

## Article 7. Construction Provisions

### 7.1 Intent of the Contract Documents.

A. For purposes of this Agreement, the term "contract documents" includes all bid documents, drawings, the Scope of Work, attachments to this Agreement, and provisions within this Agreement, along with any change orders or amendments to this Agreement.

B. It is the intent of the contract documents to describe a functionally complete Project/Service which defines the scope of work. Any work, materials, or equipment that may reasonably be inferred from the contract documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, material or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project/Service, whether such reference be specified or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the work performed, unless specifically stated otherwise herein.

C. The contract documents and all referenced standards cited therein are essential parts of the contract requirements. A requirement occurring in one is binding as though occurring in all.

D. If drawings are provided, they intended to show general arrangements, design and extent of work. In the event of a discrepancy between or among the drawings, specifications or other contract document provisions, the CONTRACTOR shall be required to comply with the provision which is the more restrictive or stringent requirement upon the CONTRACTOR, as determined by the Project Manager.

7.2 Errors and Omissions. The CONTRACTOR shall not take advantage of any apparent error or omission in the contract documents. If any error or omission appears in the contract documents, the CONTRACTOR shall immediately notify the COUNTY in writing of such errors or omissions. In the event the CONTRACTOR knows or should have known of any error or omission and failed to provide such notification, the CONTRACTOR shall be deemed to have waived any claim for increased time or compensation the CONTRACTOR may have had and the CONTRACTOR shall be responsible for the results and the costs of rectifying any such error or omission.

### 7.3 Contractor Personnel.

A. The CONTRACTOR shall assure that all personnel are competent, careful and reliable. All personnel must have sufficient skill and experience to perform their assigned task properly and satisfactorily and to operate any equipment involved, and shall make due and proper effort to execute the work in the manner prescribed in the contract documents.

B. When the COUNTY determines that any person is incompetent, unfaithful, intemperate, disorderly or insubordinate, such person shall be immediately discharged from the Project/Service and shall not again be employed on the Project/Service without the written consent of the COUNTY. Should the CONTRACTOR fail to remove such person or persons, the COUNTY may withhold all payments which are or may become due, or may suspend the work with approval of the COUNTY until such orders are complied with.

C. The CONTRACTOR shall at all times have at the Project/Service as its agent a competent superintendent capable and thoroughly experienced in the type of work being performed, who

shall receive instructions from the COUNTY. The superintendent shall supervise all trades, direct all Project/Service activities, establish and maintain installation schedules, and provide the COUNTY's Project Manager with progress reports as requested. The superintendent shall have full authority to execute the orders or directions of the COUNTY, and if applicable to supply promptly any materials, tools, equipment, labor and incidentals which may be required. Such superintendent shall be furnished regardless of the amount of work sublet. The CONTRACTOR's superintendent shall speak, write, and understand English and shall be on the job site during all working hours.

D. No alcoholic beverages or drugs are permitted on any COUNTY properties. Evidence of alcoholic beverages or drug use by an individual will result in immediate termination from the job site.

E. The CONTRACTOR shall maintain a dress code for their employee's with a minimum of shirts, pants, and work shoes/boots, in decent condition, at all times while the work is being performed. Additionally, there may be times in which the COUNTY will require all workers on a particular individual Project/Service to wear ID badges. The COUNTY shall supply the ID badges. If ID badges are necessary, the CONTRACTOR will ensure that all workers employed for that particular Project/Service, whether employed by the CONTRACTOR or a subcontractor, are scheduled, prior to assignment, for an appointment during the COUNTY'S normal working hours with the COUNTY'S Project Manager, to process and receive ID badges. All new workers must be assigned an ID badge prior to starting work for that Project/Service. The CONTRACTOR shall be aware that it may take up to one (1) week to receive ID badges after required information has been received and pictures have been taken.

F. If required by the COUNTY for the Project/Service, the CONTRACTOR shall provide the COUNTY with a complete list of personnel, subcontractors, and representatives of the CONTRACTOR that shall be utilized for the Project/Service. The list shall include a full name, address, telephone number, copy of social security card, and a copy of driver's license/State of Florida identification card/valid passport/valid work visa. Background checks may be performed by the Lake County Sheriff's Office at no expense to the CONTRACTOR, on a Task by Task basis. At no time shall any person associated with the CONTRACTOR be granted access to perform work on COUNTY property prior to a completed background check. All decisions related to the approval of background checks shall be made by the Lake County Sheriff's Office. All decisions are final. The CONTRACTOR must remove any employee, with access to COUNTY facilities, from COUNTY service who is convicted of a felony crime during the time this Agreement is in effect. Failure of the CONTRACTOR to obtain background checks if specified may result in termination of this Agreement. The COUNTY reserves the right to require immediate removal of any employee from COUNTY property it deems unfit for service for any reason. This right is non-negotiable and the CONTRACTOR agrees to this condition by accepting this Agreement. The CONTRACTOR shall have enough qualified people with current background checks so as to be able to provide a replacement within twenty-four (24) hours.

#### 7.4 Subcontractors.

A. Within five (5) calendar days after the award of any subcontract, the CONTRACTOR shall deliver to the COUNTY a statement setting forth the name and address of the subcontractor, a summary description of the work subcontracted and a copy of the subcontract.

B. The CONTRACTOR shall be fully responsible to the COUNTY for the acts and omissions of the CONTRACTOR's subcontractors and of persons either directly or indirectly employed by them.

C. All subcontractors, for as long as the subcontractor is working on the job site, shall have at least one supervisor/foreman on the job site that shall speak and understand English.

D. The CONTRACTOR shall cause its subcontractors and suppliers to comply with the Project/Service schedule and applicable sub-schedules.

E. Releases of liens from subcontractors shall be required before final payment will be released.

**7.5 Completion of the Scope of Services.** The CONTRACTOR shall give the work the attention necessary to assure the scheduled progress and shall cooperate fully with the COUNTY and with other contractors on the job site. All work shall be done in accordance with the contract documents. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the COUNTY.

**7.6 Emergencies.** If required by the Scope of Scopes, the CONTRACTOR shall have a responsible person available at, or reasonably near, the Project/Service on a twenty-four (24) hour basis, seven (7) days a week, who may be contacted in emergencies and in cases where immediate action must be taken to maintain traffic or to handle any other problem that might arise. The CONTRACTOR'S responsible person for supervision of emergencies shall speak and understand, both verbally and in writing, the English language. The CONTRACTOR shall submit to the COUNTY'S Project Manager, the phone numbers and names of personnel designated to be contacted in cases of emergencies. Included in this list shall be a twenty-four (24) hour contact phone number for all subcontractors, if any, performing work under this Agreement. This list shall contain the name of their supervisors responsible for work pertaining to this Agreement.

In the event of an emergency affecting the safety or protection of persons, or the work or property at the Project/Service site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the COUNTY is obligated to act to prevent threatened damage, injury or loss. The CONTRACTOR shall contact the COUNTY as soon as possible by telephone and with written notice as soon as feasible thereafter, but no later than twenty-four (24) hours after the occurrence of the emergency, if the CONTRACTOR believes that any significant changes in the work or variations from the contract documents has occurred. If the COUNTY determines that a change in the contract documents is required because of the action taken in response to an emergency, a change order request shall be issued to document the consequences of the changes or variations. If the CONTRACTOR fails to provide written notice within the twenty-four (24) hour limitation noted above, the CONTRACTOR shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the contract amount or an extension to the contract time.

**7.7 Safety.**

A. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work and for complying with all requirements of the Occupational Safety and Health Administration (OSHA) and any other industry, federal, state or local government standards, including the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA). The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to persons or property. The CONTRACTOR shall be aware that while working for the COUNTY, representatives from agencies such as OSHA are invitees and need not have warrants or permission to enter the work site. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the CONTRACTOR.

B. The CONTRACTOR certifies that all material, equipment, etc. to be used in an individual Project/Service meets all Occupational Safety and Health Administration (OSHA)

requirements. The CONTRACTOR further certifies that if any of the material, equipment, etc. is found to be deficient in any OSHA requirement in effect on the date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR. All standard equipment, work operations, safety equipment, personal protective equipment, and lighting required or mandated by State, Federal, OSHA, or Americans with Disabilities Act (ADA) regulations must be provided and used by the CONTRACTOR and its employees.

C. All safety devices installed by the manufacturer on equipment utilized by the CONTRACTOR on the jobsite shall be in place and in proper working order at all times. If the COUNTY determines that the equipment is deficient in safety devices, the CONTRACTOR shall be notified immediately. The CONTRACTOR shall immediately repair, or remove the equipment from service until the deficiency is corrected to the satisfaction of the COUNTY.

D. The COUNTY may periodically monitor the work site for safety. Should there be safety and/or health violations, the COUNTY shall have the authority, but not the duty, to require the CONTRACTOR to correct the violation in an expeditious manner. If there is any situation that is deemed unsafe by the COUNTY, the Project/Service will be shut down immediately upon notice and will not resume work until the unsafe condition has been remedied.

E. Should the work site be in a hazardous area, the COUNTY shall take reasonable actions to furnish the CONTRACTOR with information concerning hazards such as the types or the identification of known toxic material, machine hazards, Material Safety Data Sheets, or any other information that would assist the CONTRACTOR in the planning of a safe work site. The CONTRACTOR retains the ultimate responsibility to ensure all work is performed in a manner consistent with all applicable safety standards and directives.

F. The CONTRACTOR shall erect and maintain, as required by existing conditions and contract performance, safeguards for safety and protection such as barricades, danger signs, a construction fence, and other warnings against hazardous conditions.

G. The CONTRACTOR shall be responsible for the removal of all surplus material and debris from the Project/Service site at the end of each work day. All costs associated with clean-up and debris removal shall be included in the lump sum price stated elsewhere herein. The CONTRACTOR shall leave the site clean and neat. All work must be cleaned up prior to the next day of business. At no time shall the specified work interfere with the regular operating hours of Lake County. The CONTRACTOR must have ample cleaning supplies and a minimum of two (2) vacuum cleaners on-site for clean-up. At no time shall the CONTRACTOR use COUNTY cleaning supplies or equipment. Upon final completion, the CONTRACTOR shall thoroughly clean-up all areas where work has been involved as mutually agreed with the COUNTY's Project Manager. **PLEASE NOTE: If at any time the CONTRACTOR fails to clean up the work area to acceptable levels the COUNTY shall retain outside cleaning services and the actual costs for this service shall be deducted from the CONTRACTOR's final payment with the minimum cost of \$50.00 to offset COUNTY time for securing services to properly clean and inspect the site.**

H. The CONTRACTOR shall confine all equipment, materials and operations to the Project/Service site and areas identified in the contract documents. The CONTRACTOR shall assume all responsibility for any damage to any such area resulting from the performance of the work.

I. The CONTRACTOR is responsible for notifying the COUNTY of any hazardous materials used on the work site and providing the COUNTY a copy of the Material Safety Data Sheets (MSDS). Any spillage of hazardous chemicals and/or wastes by the CONTRACTOR shall be reported immediately to the COUNTY and cleaned up in accordance with all State and Federal Regulations. The

cost of cleanup of any spillage of hazardous chemicals and/or wastes caused by the CONTRACTOR shall be the sole responsibility of the CONTRACTOR and the COUNTY shall share no responsibility of these costs. A copy of the complete report showing compliance with local, state, and federal agencies shall be given to the COUNTY. If any hazardous chemicals or conditions are discovered during the normal operation, it is the responsibility of the CONTRACTOR to immediately contact the COUNTY with a description and location of the condition. The MSDS shall include the following information:

1. The chemical name and the common name of the toxic substance
2. The hazards or other risks in the use of the toxic substance, including the potential for fire, explosion, corrosiveness, and reactivity.
3. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by the exposure to the toxic substances.
4. The primary route of entry and symptoms of exposure.
5. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure;
6. The emergency procedure for spills, fire, disposal and first aid.
7. A description in lay terms of the known specified potential health risks posed by the toxic substance intended to alert any person reading this information.
8. The year and month, if available, that the information was compiled, and the name, address and emergency telephone number of the manufacturer responsible for preparing the information.

J. The CONTRACTOR shall designate a competent person of its organization whose duty shall be the prevention of accidents. This person shall be literate and able to communicate fully in the English language because of the necessity to read job instructions and signs, as well as the need for conversing with management personnel. This person shall be the CONTRACTOR's Superintendent unless otherwise designated in writing to the COUNTY's Project Manager. All communications to the Superintendent shall be as binding as if given to the CONTRACTOR.

#### **7.8 Traffic Maintenance.**

A. In the event that any of the work is conducted within any public right of way the CONTRACTOR shall be responsible for proper Maintenance of Traffic (MOT). Unless otherwise specified, the standard specifications to be used for the work shall be as promulgated by the Florida Department of Transportation (F.D.O.T.).

B. Maintenance of traffic shall be the responsibility of the CONTRACTOR, is part of the CONTRACTOR's proposal price and shall conform to F.D.O.T.'s most current editions of "STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION," 2015 edition (or latest edition), or FDOT "ROADWAY AND TRAFFIC DESIGN STANDARDS," 2015 (or latest edition), or FDOT "MANUAL OF UNIFORM MINIMUM STANDARDS FOR DESIGN, CONSTRUCTION AND MAINTENANCE FOR STREETS AND HIGHWAYS," 2015 (or latest edition), Federal Highway Administration (FHWA) "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)," 2015 (or latest edition), and all supplemental specifications thereto. These documents can be ordered from F.D.O.T, Maps and Publications Department, 605 Suwannee Street, Tallahassee, Florida, 32399-0450, or by going to the F.D.O.T. website at: [www.dot.state.fl.us/mapsandpublications](http://www.dot.state.fl.us/mapsandpublications).

C. All costs associated with MOT is included in the CONTRACTOR's price. No separate line items for MOT will be included in the cost. If the CONTRACTOR does not comply with the F.D.O.T. and the F.H.W.A (i.e. signs, qualified flaggers and/or barricades), the COUNTY reserves the

right to direct the CONTRACTOR to cease operation until deficiencies are corrected. In addition, no road closures shall be allowed except in the case of emergencies.

D. If the CONTRACTOR feels that assistance from an off duty police officer is needed, it shall be the responsibility of the CONTRACTOR, at the CONTRACTOR's sole cost and expense, to hire and pay for this service.

E. All lane closures shall have the prior approval of the COUNTY.

F. The foregoing requirements are to be considered as minimum and the CONTRACTOR's compliance shall in no way relieve the CONTRACTOR of final responsibility for providing adequate traffic control devices for the protection of the public and the CONTRACTOR's employees throughout the work area.

G. The use of public roads and streets by the CONTRACTOR shall provide a minimal inconvenience to the public and traffic. Furthermore, if the CONTRACTOR is utilizing the road by driving the slow moving equipment, the operator shall allow no more than three (3) vehicles to be backed up behind them at any time before pulling to the side to let traffic pass.

**7.9 Underground Utilities.** Any required ground digging or subsurface work shall be done in accordance with Chapter 556, Florida Statutes. It shall be the responsibility of the CONTRACTOR to have all underground utilities located before any work shall begin. This can be done by contacting Sunshine State One Call. They may be reached by calling 1-800-432-4770. The repairs of any damaged underground utilities as a result of the work being performed by the CONTRACTOR shall be the responsibility of the CONTRACTOR. The proper utility company shall be contacted immediately to expedite the repairs, if damage has occurred. The COUNTY shall also be notified by telephone at the earliest opportunity and shall be followed up with a written explanation of the incident within two (2) days.

**7.10 General Inspection Requirements.**

A. Due to the nature of this Agreement, the COUNTY shall at the time of establishment of need, require the CONTRACTOR to become fully informed as to the nature and extent of the work required and its relation to any other work in the area, including possible interference from other site activities. Arrangement for the CONTRACTOR'S inspection of facilities or sites and/or activity schedules may be secured from the user department. Failure to visually inspect the facilities or sites may be cause for disqualification of the CONTRACTOR on that individual Project/Service.

B. The CONTRACTOR shall furnish the COUNTY with every reasonable accommodation for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the contract documents. If the COUNTY so requests, the CONTRACTOR shall, at any time before final acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examination, the CONTRACTOR shall restore the uncovered portions of the work to the standard required by the specifications. Should the work so exposed or examined prove unacceptable in the opinion of the COUNTY, the uncovering or removal, and the replacing of the covering or making good of the parts removed, shall be at the CONTRACTOR's expense. However, should the work thus exposed or examined prove acceptable in the opinion of the COUNTY, the uncovering or removing and the replacing or the covering or making good of the parts removed, shall be paid for as unforeseen work.

C. If, during or prior to construction operations, the COUNTY should fail to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject shall in no way prevent the COUNTY's later rejection when such defect is discovered, nor



obligate the COUNTY to final acceptance or payment, and the CONTRACTOR shall make no claim for losses suffered due to any necessary removals or repairs of such defects.

D. If, during or prior to construction operations, the COUNTY rejects any portion of the work on the grounds that the work or materials are defective, the COUNTY shall give the CONTRACTOR notice of the defect, which notice may be confirmed in writing. The CONTRACTOR shall then have seven (7) calendar days from the date the notice is given to correct the defective condition. If the CONTRACTOR fails to correct the deficiency within the seven (7) calendar days after receipt of the notice, the COUNTY may take any action necessary, including correcting the deficient work utilizing another contractor, returning any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense or terminating the contract. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the COUNTY. The COUNTY will not be responsible to pay for any product or service that does not conform to the contract specifications.

E. Should the CONTRACTOR fail to remove and renew any defective materials used or work performed, or to make any necessary corrections in an acceptable manner and in accordance with the Agreement requirements, within the time indicated in writing, the COUNTY shall have the authority to cause the unacceptable or defective materials or work to be corrected as necessary at the CONTRACTOR's expense. Any expense incurred by the COUNTY, whether direct, indirect or consequential, in making said repairs, removals, or renewals shall be paid for out of any monies due or which may become due to the CONTRACTOR. A change order shall be issued, incorporating the necessary revisions to the contract documents, including an appropriate decrease to the contract amount. Such costs shall include, but not be limited to, costs of repair and replacement of work destroyed or damaged by correction, removal or replacement of the CONTRACTOR's defective work and additional compensation due the COUNTY. The CONTRACTOR shall not be allowed an extension of the contract time because of any delay in performance of the Project/Service attributable to the exercise by the COUNTY of the COUNTY's rights and remedies hereunder. If the CONTRACTOR fails to honor the change order, the COUNTY may terminate this Agreement for default.

F. All work performed and all materials furnished shall be in reasonably close conformity with the tolerances indicated in the specifications. In the event the COUNTY's Project Manager finds the materials or the finished product in which the materials are used and not within reasonably close conformity to the specifications, the COUNTY's Project Manager will then make a determination if the work shall be accepted and remain in place. In this event, the COUNTY's Project Manager will document the basis of acceptance by a Change Order that will provide for an appropriate deduction as needed in the contract price for such work or materials as the COUNTY's Project Manager deems necessary to conform to the determination based on the COUNTY's Project Manager's professional judgment.

G. When the United States Government or the State of Florida is to pay a portion of the cost of construction, the work will be subject to such inspection by federal or state representatives as deemed necessary, but such inspections will in no case make the United States Government or the State of Florida a party to this contract.

#### **7.11 Project/Service Materials and Storage.**

A. Unless otherwise specified within the contract documents, all materials to be used to complete the Project/Service, except where recycled content is specifically requested, shall be new, unused, of recent manufacture, and suitable for its intended purpose. All goods shall be assembled, fully serviced and ready for operation when delivered. In the event any of the materials supplied by the CONTRACTOR are found to be defective or do not conform to specifications: (1) the materials may be

returned to the CONTRACTOR at the CONTRACTOR's expense and the contract cancelled or (2) the COUNTY may require the CONTRACTOR to replace the materials at the CONTRACTOR's expense.

B. Materials shall be placed to permit easy access for proper inspection and identification of each shipment. Any material which has deteriorated, become damaged, or is otherwise unfit for use, as determined by the COUNTY, shall not be used in the work, and shall be removed from the site by the CONTRACTOR at the CONTRACTOR's expense. Until incorporated into the work, materials shall be the sole responsibility of the CONTRACTOR and the CONTRACTOR shall not be paid for such materials until incorporated into the work. If any chemicals, materials or products containing toxic substances are to be used at any time, the CONTRACTOR shall furnish a Material Safety Data Sheet to the COUNTY prior to commencing such use.

C. All unusable materials and debris shall be removed from the premises at the end of each workday and disposed of in an appropriate manner.

#### **7.12 Time for Completion and Extensions.**

A. Purchase orders shall be issued for Project/Services to the CONTRACTOR. Issuance of a purchase order is not a directive to begin work unless otherwise specified. A written notice to proceed is required for the CONTRACTOR to schedule or begin work. Email notice is acceptable.

B. The CONTRACTOR shall diligently pursue the completion of the work and coordinate the work being done on the Project/Service by its subcontractors and material suppliers, as well as coordinate the CONTRACTOR's work with the work of other contractors so that the CONTRACTOR's work or the work of others shall not be delayed or impaired. The CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures, as well as coordination of all portions of the work under the contract documents. The time for completion requirements are contained in sections 3.2 and 3.3 above.

C. Should the CONTRACTOR be obstructed or delayed in the completion of the work as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to the CONTRACTOR's fault or neglect, the CONTRACTOR shall notify the COUNTY in writing within twenty-four (24) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

D. If the CONTRACTOR complies with the twenty-four (24) hour notice requirement, the COUNTY shall ascertain the facts and the extent of the delay being claimed and recommend an extension to the contract time when, in the COUNTY's sole judgment, the findings of fact justify such an extension. The CONTRACTOR shall cooperate with the COUNTY's investigation of the delays by providing any schedules, correspondence or other data that may be required to complete the findings of fact. Extensions to the contract time may be granted only for those delays which impact the CONTRACTOR's construction schedule. Extensions of contract time, if approved by the COUNTY, must be authorized by written change order.

#### **7.13 Changes in the Scope of Services.**

A. The COUNTY may at any time, by written change order, in accordance with the COUNTY's Purchasing Policy and Procedures, increase or decrease the scope of the work. For changes in work requested by the CONTRACTOR, the CONTRACTOR shall prepare and submit change order requests for COUNTY approval. Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project/Service. Both the COUNTY and the CONTRACTOR shall execute the change order.

B. The value of such extra work or change shall be determined by the contract unit values, if applicable unit values are set forth in this Agreement. The amount of the change shall be computed from such values and added to or deducted from the contract price.

C. If the COUNTY and the CONTRACTOR are unable to agree on the change order for requested change, the CONTRACTOR shall, nevertheless, promptly perform the change as directed in writing by the COUNTY. If the CONTRACTOR disagrees with the COUNTY's adjustment determination, the CONTRACTOR must make a claim pursuant to the Claims and Disputes section herein, or else be deemed to have waived any claim on this matter the CONTRACTOR might have otherwise had.

D. For work not contemplated by the original Agreement, the amount of an increase shall be limited to the CONTRACTOR's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit, unless otherwise agreed to in writing by the COUNTY. In such case, the CONTRACTOR shall keep and present to the COUNTY an itemized accounting together with appropriate supporting data. In the event such changed work is performed by a subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the CONTRACTOR for all of its overhead and profit, for a total overall maximum markup of fifteen percent (15%) of the amount of changed work. All compensation due the CONTRACTOR and any subcontractor or sub-subcontractor for field and home office overhead is included in the markups listed above.

E. The COUNTY shall not be liable to the CONTRACTOR for any increased compensation in the absence of a written change order executed in accordance with COUNTY policy. The payment authorized by such a change order shall represent full and complete compensation to the CONTRACTOR for labor, materials, incidental expenses, overhead, profit, impact costs and time associated with the work authorized by such change order.

F. Execution by the CONTRACTOR of a properly authorized change order shall be considered a waiver of all claims or requests for additional time or compensation for any activities prior to the time of execution related to items included in the change order.

G. Upon receipt of an approved change order, changes in the Scope of Services shall be promptly performed. All changes in work shall be performed under the terms and conditions of this Agreement.

#### **7.14 Claims and Disputes.**

A. Claims by the CONTRACTOR shall be made in writing to the COUNTY within two (2) business days, unless another provision of this Agreement sets forth a different time frame, after the commencement of the event giving rise to such claim or the CONTRACTOR shall be deemed to have waived the claim. All claims shall be priced in accordance with the section in this document entitled "Changes in Work".

B. The CONTRACTOR shall proceed diligently with its performance as directed by the COUNTY, regardless of any pending claim, action, suit, or administrative proceeding, unless otherwise agreed to by the COUNTY in writing. The COUNTY shall continue to make payments on the undisputed portion of the Agreement in accordance with the contract documents during the pendency of any claim.

C. Claims by the CONTRACTOR shall be resolved in the following manner: (1) Upon receiving the claim and supporting data, the COUNTY shall within fifteen (15) calendar days respond to the claim in writing stating that the claim is either approved or denied. If denied, the COUNTY shall specify the grounds for denial. The CONTRACTOR shall then have fifteen (15) calendar days in which to provide additional supporting documentation, or to notify the COUNTY that the original claim stands as is. (2) If the claim is not resolved, the COUNTY may, at its option, choose to submit the matter to mediation. A mediator shall be mutually selected by the parties and each party shall pay one-half (1/2) the expense of mediation. If the COUNTY declines to mediate the dispute, the CONTRACTOR may bring an action in a court of competent jurisdiction in and for Lake County, Florida.

D. Claims by the COUNTY against the CONTRACTOR shall be made in writing to the CONTRACTOR as soon as the event leading to the claim is discovered by the COUNTY. Written supporting data shall be submitted to the CONTRACTOR. All claims shall be priced in accordance with the provisions of the section in this document entitled "Changes in Work". The CONTRACTOR shall respond in writing within fifteen (15) calendar days of receipt of the claim. If the claim cannot be resolved, the COUNTY shall have the option to submit the matter to mediation as set forth in (C) above.

E. Arbitration shall not be considered as a means of dispute resolution.

F. **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the COUNTY. The CONTRACTOR expressly acknowledges and agrees that the CONTRACTOR shall receive no damages for delay. However, this provision shall not preclude recovery or damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY. Otherwise, the CONTRACTOR shall be entitled to extensions of the contract time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

**7.15 Acceptance of the Work and Final Payment.** The work delivered and services rendered under this Agreement shall remain the property of the CONTRACTOR and shall not be deemed complete until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the COUNTY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. Any goods and/or services purchased under this Agreement may be tested/inspected for compliance with the specifications listed.

A. **Final Inspection.** When all materials have been furnished, all work has been performed, and the construction contemplated by the contract has been satisfactorily completed, the COUNTY shall make the final inspection. The final inspection shall be completed within five (5) business days of receipt of notification from the CONTRACTOR that the Project/Service is ready. The COUNTY shall notify the CONTRACTOR if necessary of any deficiencies with the Project/Service, and the CONTRACTOR shall correct all deficiencies before final acceptance and payment is made.

B. **Maintenance of Work.** The CONTRACTOR shall maintain all work in as-new condition until the final inspection is completed and the work is accepted by the COUNTY. All insurance shall be maintained until final acceptance by the COUNTY.

C. **Final Acceptance.** When the Project/Service or any portion thereof, as designated by the COUNTY, is ready for its intended use, the COUNTY and any other invited parties shall make an inspection of the Project/Service, to verify its completeness and develop a punch list of items needing completion or correction before final payment will be made. The CONTRACTOR shall have ten (10) calendar days to correct all deficiencies. An eighty dollar (\$80.00) re-inspection fee shall be applied for

the third inspection and any required re-inspection thereafter. The COUNTY shall have the right to exclude the CONTRACTOR from those portions of the work designated as complete after the inspection; provided, however, that the CONTRACTOR will have reasonable access for the time allotted by the COUNTY to complete or correct items on the punch list.

When the work provided for under this Agreement has been completely performed by the CONTRACTOR, and the final inspection has been made by the COUNTY, a final invoice will be prepared by the CONTRACTOR. The amount of this invoice, less any sums that may have been deducted or retained under the provisions of this Agreement, will be paid to the CONTRACTOR in accordance with Article 4 of this Agreement, and after the CONTRACTOR has agreed in writing to accept the balance due, as determined by the COUNTY, as full settlement of the account under this Agreement and of all claims in connection therewith. Occupancy by the COUNTY alone does not constitute final acceptance.

D. Waiver of Claims. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims by the CONTRACTOR against the COUNTY arising out of the Agreement or otherwise related to the Project/Service, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time the final estimate is prepared. Neither the acceptance of the work nor payment by the COUNTY shall be deemed a waiver of the COUNTY's rights to enforce any continuing obligations of the CONTRACTOR or to the recovery of damages for defective work not discovered by the COUNTY at the time of final inspection.

E. Termination of Contractor's Responsibilities. This Agreement will be considered complete when all work has been completed and accepted by the COUNTY and all warranty periods have expired. The CONTRACTOR will then be released from further obligation except as set forth in this Agreement.

F. Recovery Rights Subsequent to Final Payment. The COUNTY reserves the right, should an error be discovered in the invoice, or should proof of defective work or materials used by or on the part of the CONTRACTOR be discovered after the final payment has been made, to claim and recover from the CONTRACTOR by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials, including any fees or costs associated with the additional services of the COUNTY.

**7.16 Warranties.** All warranties shall begin on the date of the COUNTY'S acceptance and shall last for a period of twelve (12) months unless otherwise specified in the scope of services, plans or specifications. The CONTRACTOR shall obtain and assign to the COUNTY all express warranties given to the CONTRACTOR or any subcontractors by any material suppliers, equipment or fixtures to be incorporated into the Project/Service. The CONTRACTOR warrants to the COUNTY that any materials and equipment furnished under the contract documents shall be new unless otherwise specified, and that all work shall be of good quality, free from defects and in conformance with the contract documents. The CONTRACTOR further warrants to the COUNTY that all materials and equipment furnished under the contract documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for the contract documents. This warranty requirement shall remain in force for the full period identified above, regardless of whether the CONTRACTOR is still under contract at the time of the defect. These warranties are in addition to those implied warranties to which the COUNTY is entitled as a matter of law. Further, a specific warranty period is included as a requirement as follows:

A. If sod is used as part of an individual Project/Service, it shall be warranted to be free of noxious and invasive weeds, disease, and insects. If pests and/or noxious weeds manifest themselves within sixty (60) days of placement of the sod, the CONTRACTOR shall treat the affected

areas. The process for treating these areas shall be approved by the COUNTY. If the sod does not meet any of the required specifications, the CONTRACTOR shall be responsible to replace it at no expense to the COUNTY. It shall be the responsibility of the CONTRACTOR to insure that the sod is sufficiently established as described as specified in the scope of services, plans, or specifications. If the sod dies or does not become established the CONTRACTOR shall be responsible for the replacement at no cost to the COUNTY.

B. **Correcting Defects Covered Under Warranty.** The CONTRACTOR shall be responsible for promptly correcting any deficiency, at no cost to the COUNTY, within five (5) calendar days after the COUNTY notifies the CONTRACTOR of such deficiency in writing. If the CONTRACTOR fails to honor the warranty and/or fails to correct or replace the defective work or items within the period specified, the COUNTY may, at its discretion, notify the CONTRACTOR in writing that the CONTRACTOR may be debarred as a COUNTY vendor, and/or become subject to contractual default if the corrections or replacements are not completed to the satisfaction of the COUNTY within five (5) calendar days of receipt of the notice. If the CONTRACTOR fails to satisfy the warranty within the period specified in the notice, the COUNTY may (a) place the CONTRACTOR in default of its contract and/or (b) procure the products or services from another source and charge the CONTRACTOR for any additional costs that are incurred by the COUNTY for this work or items, either through a credit memorandum or through invoicing.

**7.17 Liquidated Damages.** Unless otherwise agreed to, weather events are specifically excluded as excused cause for delay under this Agreement and no additional days shall be given for rain days. If the deficiencies have been noted and the remedies have not been completed within the contracted time, the COUNTY may send out a notification notifying the CONTRACTOR of assessment of Liquidated Damages that can be applied for any day over the time allowed under this Agreement.

The COUNTY and the CONTRACTOR recognize that, since time is of the essence for this Agreement, the COUNTY will suffer financial loss if the work is not completed within the time specified. The COUNTY will be entitled to assess, as Liquidated Damages, but not as a penalty, for each calendar day after the scheduled completion date the Project/Service continues. The Project/Service shall be deemed to be completed on the date the work is considered complete to the satisfaction of the COUNTY. The CONTRACTOR hereby expressly waives and relinquishes any right which it may have to seek to characterize the Liquidated Damages as a penalty. The parties agree that the Liquidated Damages sum represents a fair and reasonable estimate of the COUNTY'S actual damages at the time of contracting if the CONTRACTOR fails to complete the work in a timely manner. The Liquidated Damages shall be as follows:

<u>Specific Project/Service Amount</u>	<u>Daily Charge Per Calendar Day</u>
\$5,000 and under.....	\$ 25
Over \$5,000 but less than \$10,000.....	\$ 65
\$10,000 or more but less than \$20,000 .....	\$ 91
\$20,000 or more but less than \$30,000 .....	\$121
\$30,000 or more but less than \$40,000 .....	\$166
\$40,000 or more but less than \$50,000 .....	\$228
\$50,001 or more .....	\$250

The COUNTY shall retain from the compensation to be paid to the CONTRACTOR the above-described sum. Any CONTRACTOR that is in default for not completing the work within the time specified, at the

option of the COUNTY, may not be permitted to perform work for the COUNTY until the Project/Service is complete and the liquidated damages sum is satisfied.

**7.18 Sanitation.** If the Project/Service does not involve interior work, the CONTRACTOR shall be required to provide and maintain adequate sanitary conveniences for the use of persons employed for the Project/Service. These conveniences shall be maintained at all times without nuisance, and their use shall be strictly enforced. The location of these conveniences shall be subject to the COUNTY's Project Manager's approval. All such facilities shall be installed and maintained in accordance with applicable federal, state, and local laws.

**7.19 Submittals and Equal Products.**

A. Submittals of products required for the Project/Service assigned to the CONTRACTOR hereunder, shall be supplied to the COUNTY for pre-approval prior to the start of the work. These documents shall be provided to the COUNTY at least one (1) week before the installation.

B. If a product or service requested by the COUNTY for the Project/Service has been identified in the specifications by a brand name, and has not been notated as a "No Substitute," item, such identification is intended to be descriptive and not restrictive, and is to indicate the quality and characteristics of product or service that will be acceptable. If the CONTRACTOR offers an alternate product or service for consideration, such product must be clearly identified by the CONTRACTOR to the COUNTY. The COUNTY shall make a determination whether the alternate meets the salient characteristics of the specifications. An alternate product will not be considered for any item notated "No Substitute."

C. Unless the CONTRACTOR clearly indicated that it is proposing an alternate product, the response shall be considered as offering the same brand name referenced in the specifications. If the CONTRACTOR proposes to furnish an alternate product or service, the brand name of the product or service to be furnished shall be clearly identified. A formal submittal for the alternate/shop drawings shall be submitted. The evaluation of the alternate and the determination as to acceptability of the alternate product or service shall be the responsibility of the COUNTY and will be based upon information furnished by the CONTRACTOR. The COUNTY will not be responsible for locating or securing any information which is not included in the CONTRACTOR'S response. To ensure that sufficient information is available, the CONTRACTOR shall furnish as part of the bid or proposal all descriptive material by providing the manufacturer specification sheets so the COUNTY can make an informed determination whether the product offered meets the salient characteristics required by the specifications. Failure to do so will require the use of the specified products.

**7.20 Fees.** The following is a list of fees that may be assessed to the CONTRACTOR during the term of this Agreement. These fees are assessed to help offset the additional costs associated with COUNTY labor and vehicle usage required for unnecessary inspections or missed appointments. The fees, if any, shall be deducted from the final invoices.

A. Failure to respond to emergency calls	\$250.00/day
B. Late to emergency calls	\$36.00/hour
C. Failure to provide documents or reports	\$75.00/day

Any re-inspection fee charged to the COUNTY by other agencies having jurisdiction over the Project/Service, shall additionally be charged back to the CONTRACTOR.

**7.21 Minimum Wage.** The wage rate paid to all laborers, mechanics and apprentices employed by CONTRACTOR for the work under the Agreement shall not be less than the prevailing wage rates for similar classifications of work as established by the federal government and enforced by the U.S. Department of Labor, Wages and Hours Division, and Florida's Minimum Wage requirements in Article X, Section 24(f) of the Florida Constitution and enforced by the Florida Legislature by statute or the State Agency for Workforce Innovation by rule, whichever is higher.

**7.22 Protection of Property.** All existing structures, utilities, services, roads, trees, shrubbery and property in which the COUNTY has an interest shall be protected against damage or interrupted services at all times by the CONTRACTOR during the term of this contract, and the CONTRACTOR shall be held responsible for repairing or replacing damaged property to the satisfaction of the COUNTY which is damaged by reason of the CONTRACTOR's operation on the property. In the event the CONTRACTOR fails to comply with these requirements, the COUNTY reserves the right to secure the required services and charge the costs of such services back to the CONTRACTOR. All items damaged as a result of CONTRACTOR or subcontractor operations belonging to third parties, such as but not limited to: sidewalks, irrigation, curbs, pipes, drains, water mains, pavement, mail boxes, turf, signs, or other property shall either be repaired or replaced by the CONTRACTOR, at the CONTRACTOR's expense, in a manner prescribed by, and at the sole satisfaction of the COUNTY.

Furthermore, if the Project/Service is to be completed within COUNTY facilities, the CONTRACTOR shall be responsible for repairing or replacing any portion of any COUNTY facility, whether interior or exterior, damaged by reason of the CONTRACTOR's operation within the property. In the event the CONTRACTOR fails to comply with these requirements, the COUNTY reserves the right to secure the required services and charge the costs of such services back to the CONTRACTOR. All items within a facility belonging to third parties, or to commissioners, officers, employees, leasees, invitees, or agents of the COUNTY, including but not limited to personal items and/or furniture shall either be repaired or replaced by the CONTRACTOR, at the CONTRACTOR'S expense, in a manner prescribed by, and at the sole satisfaction of the COUNTY.

**7.23 Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the COUNTY'S property during possession of such property by the CONTRACTOR, and until delivery to and acceptance of that property to the COUNTY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the COUNTY, whether the loss or damage results from acts or omissions, negligent or otherwise, of the CONTRACTOR or a third party.

**7.24 Accident Notification.** If in the course of completing work as part of this Agreement there is an accident that involves the public, the CONTRACTOR shall as soon as possible inform the COUNTY of the incident by telephone. The CONTRACTOR shall follow up in writing within two (2) business days of the incident. If Law Enforcement was involved and has written a report, the CONTRACTOR shall forward a copy of the report to the COUNTY.

**7.25 Bonds.** The CONTRACTOR shall provide a Performance Bond and a Payment Bond, on the form specified by the COUNTY, attached and incorporated by reference herein as Attachment D, each in the amount of 100% of the Project Order Form amount, the costs of which are to be paid by the CONTRACTOR. The Bonds will be acceptable to the COUNTY only if the following conditions are met:

1. For contracts that do not exceed \$500,000.00, the Surety Company:
  - a. Is licensed to do business in the State of Florida;
  - b. Holds a certificate of authority authorizing it to write surety bonds in this state;
  - c. Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;



- d. Is otherwise in compliance with the provisions of the Florida Insurance Code;
  - e. Holds a currently valid certificate of authority by the United States Department of Treasury under 31 U.S.C. ss9304-9308
- 2. For contracts over \$500,000.00, all of the requirements of Paragraph 1 above apply. In addition, the Surety Company must have a current rating of at least Excellent (A or A-) all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., of 75 Fulton Street, New York, New York 10038, with an underwriting limitation of at least two times the dollar amount of the contract.
  - 3. If the Surety for any Bond furnished by the CONTRACTOR is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the contract documents, the CONTRACTOR shall, within five (5) calendar days thereafter, substitute another Bond and Surety, both of which shall be subject to the COUNTY's approval.
  - 4. By execution of these bonds, the Surety acknowledges that it has read the Surety qualifications and Surety obligations imposed by the construction documents and hereby satisfies those conditions.

#### **Article 8. Miscellaneous Provisions**

8.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida and trial shall be non-jury.

8.2 Neither party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

8.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

8.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

8.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

8.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

8.7 Any individual, corporation, or other entity that attempts to meet its contractual obligations with the COUNTY through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years. The COUNTY as a further sanction may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

8.8 With the consent of the CONTRACTOR, other agencies may make purchases in accordance with the contract. Any such purchases shall be governed by the same terms and conditions as stated herein with the exception of the change in agency name.

8.9 The CONTRACTOR shall act as the prime CONTRACTOR for all required items and services and shall assume full responsibility for the procurement and maintenance of such items and services. The

CONTRACTOR shall be considered the sole point of contact with regards to all stipulations, including payment of all charges and meeting all requirements of this Agreement. All sub-consultants will be subject to advance review by the COUNTY in terms of competency and security concerns. No change in sub-consultants shall be made without consent of the COUNTY. The CONTRACTOR shall be responsible for all insurance, permits, licenses and related matters for any and all sub-contractors. Even if the sub-contractor is self-insured, the COUNTY may require the CONTRACTOR to provide any insurance certificates required by the work to be performed.

**8.10** The CONTRACTOR shall either be registered or have applied for registration with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes.

**8.11** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**8.12** Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to CONTRACTOR:

President  
Merrell's Grade-All, Inc.  
450 Ketch Road  
Saint Cloud, FL 34771  
Fax: 407-8920808

If to COUNTY:

County Manager  
County Administration Building  
315 West Main Street, Suite 308  
Post Office Box 7800  
Tavares, Florida 32778-7800  
Fax: 352-343-5618

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

**Article 9. Scope of Agreement**

**9.1** This Agreement is intended by the parties hereto to be the final expression of their agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. Any items not covered under this contract will need to be added via written addendum, and pricing negotiated based on final specifications.

**9.2** This Agreement contains the following Attachments, all of which are incorporated herein:

Attachment A	Scope of Work
Attachment B	Pricing Schedule
Attachment C	Right of Entry Form
Attachment D	Performance/Payment Bond

{Remainder of page left blank}

**Agreement Between Lake County, Florida and Merrell's Grade-All, Inc. for Right of Way  
Shoulder Rehabilitation; RFP #16-0022**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: COUNTY through its Board of County Commissioners, signing by and through its Chair and by CONTRACTOR through its duly authorized representative.

**CONTRACTOR**

Merrell Palmer  
Merrell L. Palmer  
President, Merrell's Grade-All, Inc.

License #: 5001-71231

This 19th day of May, 2016.

**COUNTY**

**ATTEST:**

Neil Kelly  
Neil Kelly, Clerk of the  
Board of County Commissioners  
of Lake County, Florida

Lake County, Florida, through its  
Board of County Commissioners

Sean M. Parks  
Sean M. Parks, Chairman  
This 1st day of June, 2016.

Approved as to form and legality:

Melanie Marsh  
Melanie Marsh, County Attorney

## **ATTACHMENT A**

### **SCOPE OF WORK**

#### **1. Scope of Services**

Provide rehabilitation of the shoulders in accordance with the technical requirements and complete any additional work as outlined below in the rights of way on the following roads:

##### **Cherry Lake Road (1829):**

Both sides of Cherry Lake Road (1829) totaling 16,200 linear feet marked in pink paint between County Road 33(2409) and 8625 Cherry Lake Road.

##### **Coralwood Lane (1926):**

There is one segment totaling 2,300 linear feet marked in pink paint on the west side of Coralwood Lane (1926) between 17925 Coralwood Lane and 18147 Coralwood Lane.

##### **Country Road (7798A):**

Both sides of Country Road (7798A) totaling 4,420 linear feet marked in pink paint between Oak Avenue (7798) and Swift Road (7798B).

##### **County Road 44A (6678/7077):**

Both sides of County Road 44A (6678/7077) totaling 26,308 linear feet marked in pink paint between County Road 450A (7270) and Estes Road (5876).

##### **County Road 44A (6286):**

Both sides of County Road 44A (6286) totaling 12,430 linear feet marked in pink paint between County Road 437 (5386) and 23315 County Road 44A.

##### **East Crooked Lake Drive (5069):**

Both sides of East Crooked Lake Drive (5069) totaling 4,000 linear feet marked in pink paint between Country Club Drive and Broadvue Avenue.

##### **Griffin Avenue (7807):**

There are segments on both sides of Griffin Avenue (7807) totaling 2,306 linear feet marked in pink paint between Uncle Donald's Lane and Grays Airport Road (7310).

##### **Griffin Road (4908):**

There are segments on both sides of Griffin Road (4908) totaling 4,520 linear feet marked in pink paint between Thomas Avenue (5108) and County Road 468 (5205).

Morningside Drive (4568):

There is one segment totaling 2,100 linear feet marked in pink paint on the northbound lane of Morningside Drive (4568) between Pineway Court and Sunset Circle (4769).

Oak Avenue (7798):

Both sides of Oak Avenue (7798) totaling 2,940 linear feet marked in pink paint between SR 44 and Country Road (7798A).

Old Eustis Road (4672):

Both sides of Old Eustis Road (4672) totaling 3,343 linear feet marked in pink paint between Overlook Drive and East Crooked Lake Drive (5069).

Woodlea Road (3840):

Both sides of Woodlea Road (3840) totaling 14,282 linear feet marked in pink paint between State Road 19 and Lane Park Road (3637).

The areas have been marked in pink paint on the roadway indicating the limits of the work area. There may also be markings within the limits of the work area depicting special instructions for a particular area. All measurements given herein are for center line, one way only. The work shall take place as specified by the markings on the pavement.

If the CONTRACTOR anticipates having to enter private property to complete the work, they shall have a Right of Entry form (**Attachment C**), completed and signed by the property owner prior to any work being performed on the property. The original signed form must be submitted to the COUNTY's Project Manager prior to any work commencing on said property.

## **2. Shoulder Specifications**

The CONTRACTOR shall grade and shape the roadside shoulder to provide for positive drainage. The areas shall be graded to a two percent (2%) minimum cross slope leading away from the edge of the pavement to a distance of ten (10) feet. If for some reason the two percent (2%) grade cannot be obtained, the CONTRACTOR shall contact the COUNTY's Project Manager before continuing with the work. No work shall take place to such areas until approval and direction of the COUNTY's Project Manager is provided. The grading shall be accomplished in conjunction with matching any adjacent pavement, curb, sidewalk, and structure grades. It shall also include both the removal of material to alleviate high shoulder conditions as well as backfilling areas to eliminate any drop offs.

If the ground/turf is adjacent to the roadway is above the surface of the roadway, the CONTRACTOR shall be responsible to complete the work as outlined within these

specifications. If the ground/turf is more than one (1) inch below the surface of the adjacent roadway, the CONTRACTOR shall be responsible to complete the work as outlined within these specifications.

The reshaped ten (10) foot shoulder shall not be left with windrows, bermed, or clumped material. All shoulders shall have a smooth surface with a tapered transition into existing adjacent back slope grades. The back slope areas shall be transitioned into the reshaped shoulder at a minimum of a three to one (3:1) slope. Any areas that cannot be transitioned within the minimum three to one (3:1) slope shall be brought to the attention of the County's Project Manager. No work shall take place to such areas until approval and direction of the County's Project Manager is provided.

### **3. Fill Material**

When fill material is required, it shall be quality topsoil, free of noxious weeds and capable of supporting the growth of the sod that shall be installed. This fill shall be supplied by the CONTRACTOR and it shall be their responsibility to provide hauling to the site. The CONTRACTOR shall be allowed to use soil removed from high shoulders within the same project area. Prior approval from the County's Project Manager shall be obtained if the CONTRACTOR proposed to bring in soil from high shoulders on another project site.

### **4. Compaction**

All areas that have either been excavated or filled shall be compacted to not less than ninety eight percent (98%) of maximum unit weight as determined by using the Modified Proctor Compaction test method T-180 per the American Association of State Highway and Transportation Officials (AASHTO). These tests shall be conducted by an independent testing laboratory approved by the County. There shall be a minimum of one (1) test taken every five hundred (500) feet on each side of the road, and it shall be a minimum of six (6) inches in depth. The CONTRACTOR shall supply to the Project Manager copies of these reports showing the results of the density tests. If any of these reports indicate that the proper compaction was not achieved, the CONTRACTOR shall re-compact the area for a distance of five hundred (500) feet on each side of the failing test area, and the CONTRACTOR shall be responsible to have a new test completed at a location selected by the County's Project Manager. If sod has been installed over a failing test area, it shall be removed before the compaction work starts and shall be put back in place after the work has been completed.

### **5. Sod**

All disturbed areas within the project area shall be re-sodded with the type of grass matching the adjacent area. Should no grass exist in the surrounding area, Bahia sod shall be used. The final evaluation of the sod after it is installed shall be so that the top mat of the sod is even with the top surface of the adjacent asphalt or other impervious surface, and with the existing turf on the back slope. Any sod not installed at this elevation shall be rejected and replaced by the CONTRACTOR to the proper height at no additional cost to the County. The CONTRACTOR shall also be responsible to install sod in any areas within the project site where there is no turf growing regardless if the CONTRACTOR has not performed any grading in that area.

Sod shall be installed as the grading is completed. At no time shall the graded area be allowed to be without sod for more than twenty-four (24) hours from the grading operation. Any areas left overnight with a drop off that is more than one (1) inch at the edge of pavement shall be clearly marked by the CONTRACTOR with lighted barricades.

The CONTRACTOR shall roll the sod using a lightweight turf roller to provide for a true and even surface without any displacement or deformation of the sod.

All sod shall be watered by the CONTRACTOR until established. Established sod shall be defined as roots extending from the newly installed sod into the compacted soil to a stage that it is difficult to remove the sod.

#### **6. Site Cleanup**

All roadways shall be swept using a broom tractor or other means approved by the County's Project Manager before the areas are opened to motorized vehicles.

#### **7. Project Spoils**

Any extra spoils collected from this operation shall become the property of the CONTRACTOR and it shall be their responsibility to insure the proper disposal of this material. If the CONTRACTOR intends to dispose of the spoils on private property, the CONTRACTOR shall supply to the County's Project Manager an original authorization letter from the property owner allowing for the disposal on the private property. This letter shall include an acknowledgement that the spoils can be deposited on their property, the owner's name, property address, telephone number and the legal signature of the owner.

#### **8. Pre-Construction Video**

It shall be the responsibility of the CONTRACTOR to make a videotape of all current conditions of the project limits in DVD format such as, but not limited to: driveways, road intersections, roadway edges, vegetation, etc., before any work starts. The CONTRACTOR shall focus on any deficient conditions present at the time of the videotaping. The date and time shall be recorded on the video at the time it is being created. A copy of this video shall be supplied and approved by the County's Project Manager prior to the commencement of any work.

#### **9. Property Damage**

The CONTRACTOR is to take extra care to preserve and prevent damage to the edges of the pavement. Work shall be performed in a manner so as not to cause damage to the edges of the pavement. If required, the CONTRACTOR is expected to manually remove the shoulder material immediately abutting the edge of pavement.

The CONTRACTOR shall be responsible for locating and preserving any sprinkler systems that may be in the work location. If the CONTRACTOR does damage to any such system, it shall be the responsibility of the CONTRACTOR to repair the damage at no additional cost to the County.

Any damage caused by the operations of the vendor or their subcontractor shall be remedied at the vendor's expense as outlined in Section 7.22 of this Agreement, Protection of Property.



**Attachment B**  
**Pricing Schedule**

	Merrell's Grade-All, Inc.			
	Days to Complete	Price Option 1 (no discount)	Price Option 2 (awarded multiple)	Price Option 3 (awarded all)
Cherry Lake Road (1829)	30	\$ 77,940.00	\$ 77,760.00	\$ 68,040.00
Coralwood Lane (1926)	6	\$ 11,730.00	\$ 11,500.00	\$ 9,660.00
Country Road (7798A)	2	\$ 6,000.00	\$ 5,900.00	\$ 4,200.00
County Road 44A (6678/7077)	48	\$ 110,493.60	\$ 110,493.60	\$ 110,493.60
County Road 44A (6286)	23	\$ 58,421.00	\$ 57,178.00	\$ 52,206.00
East Crooked Lake Drive (5069)	8	\$ 24,000.00	\$ 22,000.00	\$ 16,800.00
Griffin Avenue (7807)	9	\$ 12,683.00	\$ 12,452.40	\$ 9,685.20
Griffin Road (4908)	6	\$ 20,792.00	\$ 20,692.00	\$ 18,984.00
Morningside Drive (4568)	6	\$ 12,600.00	\$ 12,390.00	\$ 8,820.00
Oak Avenue (7798)	7	\$ 17,640.00	\$ 16,758.00	\$ 12,348.00
Old Eustis Road (4672)	7	\$ 18,386.50	\$ 16,715.00	\$ 14,040.60
Woodlea Road (3840)	28	\$ 65,697.20	\$ 62,840.80	\$ 59,948.40
<b>TOTAL:</b>	<b>180</b>	<b>\$ 436,383.30</b>	<b>\$ 426,679.80</b>	<b>\$ 385,225.80</b>

The County reserves the right to make award(s) on a lowest price basis to the responsive and responsible vendor(s) who submits the lowest price by individual item, group of items, all or none, or a combination thereof with one or more vendor(s).



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/25/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Amsley Insurance Services Inc 1617 13TH ST  SAINT CLOUD FL 34769-4306		<b>CONTACT NAME:</b> Lance Turck <b>PHONE (A/C, No, Ext):</b> (407) 892-9645 <b>FAX (A/C, No):</b> (407) 892-7807 <b>E-MAIL ADDRESS:</b> info@amsleyinsurance.com	
<b>INSURED</b> Merrell's Grade-All Inc 450 Ketch Rd Saint Cloud FL 34771-8237		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Scottsdale Insurance Co INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		CPS2452693	04/24/2016	04/24/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 100,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ITB # 16-0022

"Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

## CERTIFICATE HOLDER

## CANCELLATION

Lake County, A Political Subdivision of the State of Florida, and the Board of County Commissioners  
P.O. Box 7800  
Tavares, FL 32778-7800

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*James Turck*



Policy number: 34550506

Underwritten by:

Progressive Express Insurance Co.

05/25/2016

## Certificate of Insurance

Certificate Holder	Insured	Agent
Additional Insured		
ADDITIONAL INSURED	MERRELLS GRADE-ALL INC	PROG COMMERCIAL
LAKE COUNTY, THE BOARD OF COUNTY	450 KETCH RD	PO BOX 94739
COMMISSIONERS	SAINT CLOUD FL 34771	CLEVELAND OH44101
PO BOX 7800		
TAVARES, FL 32778-7800		

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies.

Policy Effective Date:	Policy Expiration Date:
04/01/2016	04/01/2017

Insurance coverage(s)	Limits
SING BODILY INJURY	
PROPERTY DAMAGE	\$1,000,000 EACH ACC
COMPREHENSIVE	LESS \$2500 DED.
COLLISION OR UPSET	LESS \$2500 DED.
UM NON-STACKED	\$300,000/EACH OCC
BASIC PIP	\$10,000
LESS NO DED. WITHOUT WORKERS COMP	
FOR NAMED INSURED	

**Description of Location/Vehicles/Special Items**  
**Scheduled autos only**

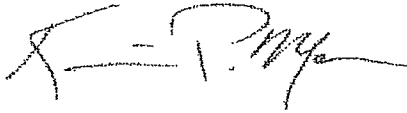
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95 INTL 257	1HTGGADTXSH634380 02
92 INTL 820	1HSHGCUR1NH443959 02
89 GMC C76	1GDT7D4Y2KV513400 02

**Certificate number**

14616663050

PROJECT 16-0022

**Please be advised that additional insureds and lienholders will be notified in the event of a mid-term cancellation.**

A handwritten signature in black ink, appearing to read "K. T. My" or similar, with a stylized flourish at the end.

Form COI-AI



JEFF ATWATER  
CHIEF FINANCIAL OFFICER

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF WORKERS' COMPENSATION

**\*\* CERTIFICATE OF ELECTION TO BE EXEMPT FROM FLORIDA WORKERS' COMPENSATION LAW \*\***

**CONSTRUCTION INDUSTRY EXEMPTION**

This certifies that the individual listed below has elected to be exempt from Florida Workers' Compensation law.

**EFFECTIVE DATE:** 2/10/2015 **EXPIRATION DATE:** 2/9/2017

**PERSON:** PALMER MERRELL L

**FEIN:** 050539974

**BUSINESS NAME AND ADDRESS:**

MERRELL'S GRADE ALL INC

450 KETCH ROAD

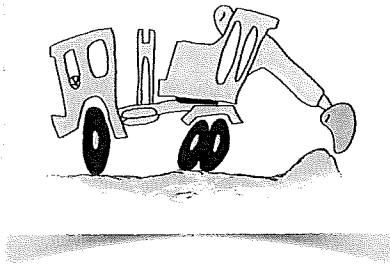
SAINT CLOUD FL 34771

**SCOPES OF BUSINESS OR TRADE:**

STREET OR ROAD	STREET OR ROAD	EXCAVATION AND
CONSTRUCTION: S	MAINTENANCE OR	DRIVERS NOC

Pursuant to Chapter 440.05(14), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter. Pursuant to Chapter 440.05(12), F.S., Certificates of election to be exempt... apply only within the scope of the business or trade listed on the notice of election to be exempt. Pursuant to Chapter 440.05(13), F.S., Notices of election to be exempt and certificates of election to be exempt shall be subject to revocation if, at any time after the filing of the notice or the issuance of the certificate, the person named on the notice or certificate no longer meets the requirements of this section for issuance of a certificate. The department shall revoke a

**Merrell's Grade-All, Inc.**  
450 Ketch Road; St. Cloud, FL 34771



Lake County  
Board of County Commissioners  
P.O. Box 7800  
Tavares, FL 32778-7800

May 25, 2016

Re: 16-0022  
Right of Way Shoulder Rehabilitation

**WORKERS COMPENSATION EXEMPTION**

I, Merrell Palmer, serving as President of Merrell's Grade-All, Inc. do hereby certify that Merrell Palmer will be the only employee of Merrell's Grade-All, Inc. working on the project described in ITB: 16-0022.

Merrell's Grade-All, Inc. contracts with labor-leasing providers for labor when additional labor is necessary.

 President  
Signature Title

Date: 05/25/16

Merrell Palmer  
Printed Name